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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

|  |   |                          |
|--|---|--------------------------|
| Mandakini Gupte,                                     | ) |                          |
|  | ) |                          |
| Plaintiff,   | ) |                          |
|  | ) | Case No.                 |
| vs.  | ) |                          |
|  | ) |                          |
| Michael Mukasey, Attorney General of the             | ) | COMPLAINT FOR MANDAMUS   |
| United States; Michael Chertoff, Secretary of the    | ) | TO COMPEL DEFENDANTS     |
| Department of Homeland Security; Jonathan            | ) | TO COMPLETE ADJUDICATION |
| Sharfen, Director of United States Citizenship &     | ) | OF ADJUSTMENT OF STATUS  |
| Immigration Services; Robert S. Mueller, III,        | ) | APPLICATION              |
| Christina Poulos, Director of the California Service | ) |                          |
| Center; Robin Barrett, USCIS District Director,      | ) | A 074331497              |
| et al;   | ) | MSC-07-311-14511         |
| Defendants   | ) |                          |
|  | ) |                          |

**PLAINTIFF'S ORIGINAL COMPLAINT  
FOR WRIT IN THE NATURE OF  
MANDAMUS**

COMES NOW Mandakini Gupte, Plaintiff in the above-styled and numbered cause, and for cause of action would show unto the Court the following:

1. This action is brought against the Defendants to compel action on an application for classification for lawful permanent resident status properly filed by the Plaintiff. The application was filed and remains within the jurisdiction of the Defendants, who have

improperly withheld action on said application to Plaintiff's detriment.

## PARTIES

2. Plaintiff, Mandakini Gupte is a 72 year old native of India. Her United States citizen son, Prashant Gupte, filed an I-130 petition for her on or about July 26, 2007. Based on her status as an immediate relative of a United States citizen, who had filed a petition for her, she submitted form I-485, to the United States Citizenship and Immigration Services (USCIS) on or about July 26, 2007. To date, no decision has been made on that application.
3. Defendant, Michael Mukasey, is Attorney General of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Justice. 8 U.S.C. §1103(a). More specifically, the Attorney General is responsible for the adjudication of applications for adjustment of status filed pursuant to the Immigration and Nationality Act (INA). The United States Citizenship and Immigration Service is an agency within the Department of Justice to whom the Attorney General's authority has in part been delegated, and is subject to the Attorney General's supervision.
4. Defendant, Michael Chertoff, is Secretary of the Department of Homeland Security, and this action is brought against him in his official capacity. He is charged with supervisory authority over all operations within the Department of Homeland Security. The United States Citizenship and Immigration Service is an agency within the Department of Homeland Security to whom the Secretary of Homeland Security's authority has in part been delegated, and is subject to his supervision.
5. Defendant, Jonathan Sharfen, is Acting Director of USCIS, and this action is brought against him in his official capacity. He is charged with supervisory authority over all operations of

USCIS.

6. Defendant, Christina Poulos, is Director of the USCIS California Service Center, and this action is brought against her in her official capacity. She is charged with supervisory authority over all operations of the California Service Center.
7. Defendant, Robin Barrett, USCIS District Director is the official of the United States Citizenship and Immigration Service generally charged with supervisory authority over all operations of the USCIS within her District with certain specific exceptions not relevant here. This action is brought against her in her official capacity. 8 CFR §103.1(g) (2)(ii)(B). As will be shown, Defendant District Director is the official with whom Plaintiff's USCIS applications were properly filed.
8. Defendant, Robert S. Mueller, III, Director of the Federal Bureau of Investigations is charged with Supervisory Authority over all operations of the FBI. Defendant, Robert Mueller, III, is responsible for the completion of the security clearance in Plaintiff's case.

#### **JURISDICTION**

9. Jurisdiction in this case is proper under 28 U.S.C. §§1331 and 1361, 5 U.S.C. §701 *et seq.*, and 28 U.S.C. §2201 *et seq.* Relief is requested pursuant to said statutes.

#### **VENUE**

10. Venue is proper in this court, pursuant to 28 U.S.C. §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred. More specifically, Plaintiff's application for lawful permanent resident status was properly filed and, to Plaintiff's knowledge, remains pending.

#### **EXHAUSTION OF REMEDIES**

11. Plaintiff has exhausted her administrative remedies. Plaintiff has made inquiries concerning the status of her application, to no avail. Defendants have responded to the effect that the application remains pending. There are no administrative remedies remaining for the Plaintiff to exhaust, because there is no administrative body to which she can appeal the refusal of the Defendants to perform their ministerial duties.

#### **CAUSE OF ACTION**

12. Plaintiff submitted an application for adjustment of status.
13. Plaintiff has not received any written notice of decision regarding the I-485 petition for adjustment of status to that of a lawful permanent resident under INA section 245.
14. All legal prerequisites having been satisfied, Plaintiff applied for adjustment of status to lawful permanent resident with the Defendant District Director on or about July 26, 2007.
15. Plaintiff's application for adjustment of status has now remained unadjudicated for more than nine months.
16. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements. To date, said application has not been adjudicated.
17. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have delayed in and have refused to adjudicate Plaintiff's application for three years and eight months, thereby depriving her of the right to a decision on her status and the peace of mind to which Plaintiff is entitled.
18. Plaintiff has been further damaged by being deprived of the status of lawful permanent resident during the unreasonable pendency of his application. Plaintiff seeks to integrate fully into American life, society and culture. Naturalization as an American citizen, with the rights and privileges inherent therein, depends upon prior permanent resident status for at

least 5 years. INA § 319(a), 8 U.S.C. § 1430(a). Plaintiff is therefore being deprived of the right to accumulate the requisite time as a permanent resident before he is eligible to apply for naturalization, as a direct result of Defendants' failure to timely adjudicate his application to adjust status.

19. Plaintiff has been further damaged by the failure of Defendants to act in accord with their duties under the law.

(a) Specifically, Mandakini Gupte would like to be able to travel internationally. So long as her application for adjustment of status is pending, her travel is restricted by federal regulation which requires special permission to travel abroad during the pendency of such applications. Departure without the advanced parole travel document would be deemed an abandonment of the permanent resident application.

*Id.*

20. The Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

21. Plaintiff has made status inquiries in an attempt to secure adjudication of her application, to no avail. Accordingly, Plaintiff has been forced to retain the services of an attorney to pursue the instant action.

#### **PRAYER**

22. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

(a) requiring Defendants to adjudicate Plaintiff's application for adjustment of status

within 30 days;

- (b) awarding Plaintiff reasonable attorney's fees; and
- (c) granting such other relief at law and in equity as justice may require.

Dated:

Respectfully submitted,

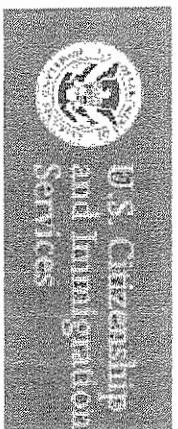
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Shah Peerally, Esq  
Attorney for Plaintiff

**LIST OF EXHIBITS**

- A March 17, 2008 USCIS Case Status Service Online;
- B April 9, 2008 Letter from USCIS regarding status of case.

“Exhibit A”



Home     Contact Us     Privacy Policy     Website Policies     NOFEEAR     Freedom Of Information Act     FirstGov  
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Services & Benefits     Immigration Forms     Laws & Regulations     About USCIS     Education & Resource     Press Room

Receipt Number: msc073114511

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Services While Your Case Is Pending

Civil Surgeons

Current Status: This case is now pending at the office to which it was transferred.

[Processing Times](#)  
[Case Status Online](#)

**Case Status Search**  
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The I-485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS was transferred and is now pending standard processing at a USCIS office. You will be notified by mail when a decision is made, or if the office needs something from you. If you move while this case is pending, please use our Change of Address online tool to update your case with your new address. We process cases in the order we receive them. You can use our processing dates to estimate when this case will be done, counting from when USCIS received it. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. To receive e-mail updates, follow the link below to register.

You can choose to receive automatic case status updates, which will be sent via email. Please click [here](#) to create an account online.

If you would like to see our current Processing Dates for Applications and Petitions, click [here](#).

Note: Case Status is available for Applications and Petitions which were filed at USCIS Service Centers. If you filed at a USCIS Local Office, your case status may not be reviewable online but for processing times on forms filed at that Office please, click [here](#).

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 - 5283 or 1-800-767-1833 (TTY).

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03-17-2008 01:51 PM EDT

"Exhibit B"

U.S. Department of Homeland Security  
California Service Center  
P.O. Box 30111  
Laguna Niguel, CA 92637-0111

 U.S. Citizenship  
and Immigration  
Services

Wednesday, April 9, 2008

LAW OFFICE OF SHAH PEERALLY  
ATTORNEY/PARALEGAL COPY

MANDAKINI GUPTA  
4510 PERALTA BLVD, SUITE 23  
FREMONT CA 94536

Dear Mandakini Gupta:

On 04/01/2008 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

**Person who contacted us:**

Keefe, Erich  
Attorney or Authorized Representative

**Attorney Name:**

Information not available

**Case type:**

1485

07/26/2007

MSC-07-311-1451

Information not available

Information not available

Outside Normal Processing Times

The status of this service request is:

Your application is currently pending review. Please allow approximately 90 days for completion before submitting additional inquiries. You will be notified by mail once a decision has been made on your case.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.